

**IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS**

CIVIL ACTION NO. 04-12448-AO

GMAC MORTGAGE CORPORATION,

Plaintiff,

v.

**JEFFREY L. BAYKO, SR., LISA J. BAYKO,
HELEN E. BAYKO, MICHAEL J. BAYKO,
BANKNORTH GROUP, HANS R. HAILEY,
CHARLES D. ROTONDI,
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE, THE
UNITED STATES OF AMERICA, GARY
EVANS, CHRISTINE ANN FARO, AND
JOHN AQUINO,**

Defendants.

US DISTRICT COURT
DISTRICT OF MASS.

2005 FEB - 8 P 1:10

WILLIAMS OFFICE
FILED

**PLAINTIFF'S MOTION TO DEPOSIT SURPLUS FUNDS
INTO COURT AND WITHDRAW**

Now comes the Plaintiff, GMAC Mortgage Corporation (hereinafter "GMAC"), and moves pursuant to Rule 67 of the Federal Rules of Civil Procedure to deposit into Court the surplus funds, plus all accrued interest, minus attorney's fees and costs it has incurred in connection with the filing and prosecution of this interpleader action, and to thereafter be discharged of all further liability to the Defendants and be dismissed from the action..

As grounds therefore, the Plaintiff states:

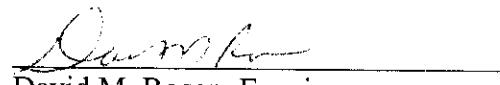
1. Plaintiff is the holder of surplus funds after a mortgage foreclosure sale in the sum of \$186,742.59.

2. The defendants are all of the known potential claimants to the funds.
3. Prior to the Removal of this action from State Court to Federal Court, Plaintiff served a Motion To Deposit Surplus Funds into Court And Withdraw with an affidavit in support of David M. Rosen, Esq.. This motion was served on all Defendants pursuant to Rule 9A of the State Superior Court Rules of Procedure. No opposition was received to this motion. However, the case was removed to Federal Court before the Motion To Deposit was filed with the Court. A true copy of this Motion and supporting Affidavit is attached hereto and incorporated herein as Exhibit A.
4. Since the removal of this action, various Defendants have filed numerous pleadings with the Court seeking to perfect their claims to the funds. The Massachusetts Dept. of Revenue is also seeking dismissal on 11th Amendment grounds. No party has voiced any objection to Plaintiff's attempt to deposit the funds with the Court for administration.
5. To date, Plaintiff remains a disinterested party to this action and requests permission to deposit the surplus with the Court, less its fees and costs for this action.

WHEREFORE, GMAC Mortgage Corporation respectfully requests this Court allow its Motion to Deposit Surplus Funds in the amount of \$186,742.59, less attorney's fees and costs in the amount of \$3,987.44, into this Honorable Court and thereby be discharged from all further liabilities to the Defendants, and be dismissed from the action.

Respectfully submitted this 4th day of February, 2005.

GMAC MORTGAGE CORPORATION,
By its Attorney,



David M. Rosen, Esquire
BBO#: 552866
Harmon Law Offices, P.C.
P.O. Box 610389
Newton Highlands, MA 02461-0389
(617) 558-0500

HARMON LAW OFFICES, P.C.

150 CALIFORNIA STREET
NEWTON, MASSACHUSETTS 02458

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SERVING MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND

DAVID M. ROSEN
(617) 558-8457
(617) 244-7304
drosen@harmonlaw.com

November 2004

Jeffrey L. Bayko
61 Story Avenue
Newburyport, MA 01950

Charles D. Rotondi
79 State Street
Newburyport, MA 01950

Christine Ann Faro
79 State Street
Newburyport, MA 01950

Timothy Sullivan
451 Andover Street, Suite 185
North Andover, MA 01845

Michele Rooke
Doherty, Wallace, Pillsbury & Murphy
One Monarch Place
1414 Main Street, Suite 1900
Springfield, MA 01144-1900

Hans R. Hailey
225 Friend Street, 5th Floor
Boston, MA 02114

Eileen McAuliffe
Massachusetts Department of Revenue
P.O. Box 55486
51 Sleeper St
Boston, MA 02205-5486

Brenda Hyde
Internal Revenue Service
P.O. Box 9112, Stop 20800
Boston, MA 02203

Gary Evans
Evans Law & Associates
8 Prospect Street
Georgetown, MA 01833

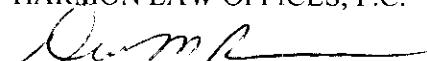
John Aquino
Anderson Aquino, LLP
260 Franklin Street, 19th Floor
Boston, MA 02110

**Re: GMAC Mortgage Corporation v. Jeffrey Bayko, et al.
Civil Action No. 04-01855-B**

Dear Sir/Madam:

The enclosed copy of the Motion to Deposit Surplus Funds into Court and Withdraw and Affidavit of David M. Rosen are being served upon you pursuant to the Massachusetts Superior Court Rule 9A. Within the time allowed by said rule, please provide me with an original and a copy of your Opposition, if any, for my filing with the Court. Thank you.

Very truly yours,
HARMON LAW OFFICES, P.C.


David M. Rosen



COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

**SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 04-01855-B**

GMAC MORTGAGE CORPORATION,

Plaintiff,

v.

**JEFFREY L. BAYKO, SR., LISA J. BAYKO,
HELEN E. BAYKO, MICHAEL J. BAYKO,
BANKNORTH GROUP, HANS R. HAILEY,
CHARLES D. ROTONDI,
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE, THE
UNITED STATES OF AMERICA, GARY
EVANS, CHRISTINE ANN FARO, AND
JOHN AQUINO,**

Defendants.

**PLAINTIFF'S MOTION TO DEPOSIT SURPLUS FUNDS
INTO COURT AND WITHDRAW**

Now comes the Plaintiff, GMAC Mortgage Corporation (hereinafter "GMAC"), and moves pursuant to Rule 67 of the Massachusetts Rules of Civil Procedure to deposit into Court the surplus funds, plus all accrued interest, minus attorney's fees and costs it has incurred in connection with the filing and prosecution of this interpleader action.

As grounds therefore, the Plaintiff states:

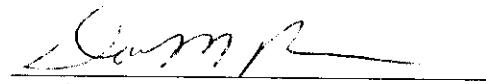
1. It has no right, title or interest to the net surplus funds.
2. Defendant, Jeffrey L. Bayko, has been properly served with process.
3. Defendant, Lisa J. Bayko, has been properly served with process.
4. Defendant, Helen E. Bayko has filed an Answer.
5. Defendant, Michael J. Bayko has filed an Answer.

6. Defendant, Banknorth Group has filed an Answer.
7. Defendant, Hans R. Hailey has filed an Answer.
8. Defendant, Charles D. Rotondi has been properly served with process.
9. Defendant, Commonwealth of Massachusetts Department of Revenue has not filed a response to date.
10. Defendant, The United States of America has been properly served with process.
11. Defendant, Gary Evans has been properly served with process.
12. Defendant, Christine Ann Faro has been properly served with process.
13. Defendant, John Aquino has been properly served with process.

The Plaintiff currently holds the sum of \$186,742.59 in surplus funds. The Plaintiff requests the Court's approval to retain the sum of \$3,987.44 to cover its costs and attorney's fees incurred in connection with this interpleader action. (See Exhibit "A" attached hereto.)

WHEREFORE, GMAC Mortgage Corporation respectfully requests this Court allow its Motion to Deposit Surplus Funds in the amount of \$186,742.59, less attorney's fees and costs in the amount of \$3,987.44, into this Honorable Court and thereby be discharged from all further liabilities as to the Defendants.

GMAC MORTGAGE CORPORATION,
By its Attorney,



David M. Rosen, Esquire
BBO#: 552866
Harmon Law Offices, P.C.
P.O. Box 610389
Newton Highlands, MA 02461-0389
(617) 558-0500

Dated:

EXHIBIT "A"

SUCCESSFUL BID: \$307,500.00

FUNDS OWED TO
GMAC MORTGAGE CORP.: \$120,757.41

SURPLUS FUNDS: \$186,742.59

COMMONWEALTH OF MASSACHUSETTS

ESSEX, SS.

**SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT
CIVIL ACTION NO. 04-01855-B**

GMAC MORTGAGE CORPORATION,

Plaintiff,

v.

**JEFFREY L. BAYKO, SR., LISA J. BAYKO,
HELEN E. BAYKO, MICHAEL J. BAYKO,
BANKNORTH GROUP, HANS R. HAILEY,
CHARLES D. ROTONDI,
COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE, THE
UNITED STATES OF AMERICA, GARY
EVANS, CHRISTINE ANN FARO, AND
JOHN AQUINO,**

Defendants.

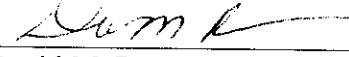
AFFIDAVIT OF DAVID M. ROSEN

I, David M. Rosen, being sworn under oath, do hereby depose and state:

1. I am counsel for the Plaintiff, GMAC Mortgage Corporation.
2. I am a member in good standing of the bar of the State of Massachusetts and I am an associate at Harmon Law Offices, P.C. I submit this affidavit in support of the request for attorney fees and costs;
3. The Plaintiff's fees to date for prosecution of this Interpleader action are \$3,987.44 including costs for filing fees, and service of the summons.
4. The costs associated with this matter total \$539.94 including the cost for filing the complaint and the cost for the sheriff service of the complaint.

5. The legal fees associated with this matter are \$3,447.50 which is 14.65 hours billed at \$195.00 per hour and 6.95 hours billed at \$85.00 per hour.
(See attached Exhibit "A")
4. I performed and/or oversaw all of the work for this Interpleader Action.
5. The Defendant is not an infant or incompetent person.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY THIS 11 day of November 2004.



David M. Rosen

HARMON LAW OFFICES, P.C.
150 CALIFORNIA STREET
NEWTON, MASSACHUSETTS 02458

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SERVING MASSACHUSETTS, NEW HAMPSHIRE AND RHODE ISLAND

November 2004

GMAC Mortgage Corporation
500 Enterprise Road, Suite 150
P.O. Box 969
Horsham, PA 19044-0969

Re: GMAC Mortgage Corporation v. Jeffrey Bayko, et al.

**FOR PROFESSIONAL SERVICES RENDERED
INTERPLEADER ACTION \$ 3,987.44**

Disbursements:

Filing Fee: \$ 345.00
Sheriff's Service: \$ 194.94

Total Disbursements: \$ 539.94

Legal Fees:

14.65 hours @ \$195.00/hour \$ 2,856.75
6.95 hours @ \$85.00/hour \$ 590.75

Total Legal Fees: \$ 3,447.50

TOTAL DUE \$ 3,987.44

CERTIFICATE OF SERVICE

I, David M. Rosen, hereby certify that true copies of the Motion to Deposit and Withdraw and the Affidavit of David M. Rosen were served on November 18, 2004 by mailing via first class mail, postage prepaid,to:

Attorney Charles D. Rotondi
79 State Street
Newburyport, MA 01950

Jeffrey L. Bayko
61 Story Avenue
Newburyport, MA 01950

Attorney Timothy Sullivan
451 Andover Street, Suite 185
North Andover, MA 01845

Christine Ann Faro, Esq.
79 State Street
Newburyport, MA 01950

John Aquino
Anderson & Aquino, LLP
260 Franklin Street
Boston, MA 02110

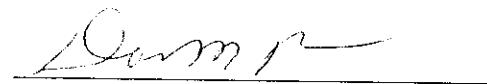
Hans R. Hailey, Esq.
225 Friend Street, 5th Floor
Boston, MA 02114

Gary E. Evans, Esq.
Evans Law & Associates
8 Prospect Street
Georgetown, MA 01833

Michele A. Rooke
Doherty, Wallace, Pillsbury and Murphy
One Monarch Place
1414 Main Street, Suite 1900
Springfield, MA 01144-1900

Brenda Hyde
Internal Revenue Services
Special Procedures
P.O. Box 9112, Stop 20800
J.F.K. Post Office
Boston, MA 02203

Eileen Ryan McAuliffe
Department of Revenue
Litigation Bureau, 7th Floor
P.O. Box 9565
100 Cambridge Street
Boston, MA 02114



David M. Rosen

CERTIFICATE OF SERVICE

I, David M. Rosen, hereby certify that true copies of the Motion to Intervene To Deposit Funds With Court and/or For Further Instructions and the Notice of Hearing were served by mailing via first class mail, postage prepaid,to:

Attorney Charles D. Rotondi
79 State Street
Newburyport, MA 01950

Attorney Timothy Sullivan
451 Andover Street, Suite 185
North Andover, MA 01845

Christine Ann Faro, Esq.
79 State Street
Newburyport, MA 01950

John Aquino
Anderson & Aquino, LLP
260 Franklin Street
Boston, MA 02110

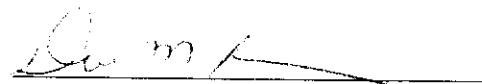
Hans R. Hailey, Esq.
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Michele Rooke, Esq.
Doherty, Wallace, Pillsbury and Murphy, P.C.
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Springfield, MA 01855

Lydia Bottome Turanchik
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 55
Ben Franklin Station
Washington, D.C. 20044

Eileen McAuliffe
Department of Revenue
Collections Bureau
P.O. Box 7021
Boston, MA 02204



David M. Rosen

Dated: February 7, 2005